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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/530,868

11/16/2005

Larry Hryshko

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10/06/2008

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EXAMINER

WOOD, AMANDA P

ART UNIT

PAPER NUMBER

1657

MAIL DATE

DELIVERY MODE

10/06/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/530,868	Applicant(s) HRYSHKO, LARRY	
	Examiner AMANDA P. WOOD	Art Unit 1657	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2 and 4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2 and 4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group II in the reply filed on 23 June 2008 is acknowledged. The traversal is on the ground(s) that claims 2 and 4 (i.e., Inventions II and IV) differ only in the location of the test compound, whether it is placed in the first flowable fluid or in the second flowable fluid. Applicant's arguments are found persuasive, and therefore, the restriction requirement between claims 2 and 4 is withdrawn.

Applicant has cancelled claims 1, 3, and 5.

Claims 2 and 4 are presented for consideration on the merits.

Priority

Applicant's claim to priority of PCT/CA03/01516 filed on 9 October 2003, and of US Provisional Application 60/416912, filed on 9 October 2002, has been considered.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 11 April 2005 has been received and considered by the examiner. A signed copy of the IDS is included with this Office Action.

Drawings

The drawings filed on 11 April 2005 have been received and are accepted.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 2 and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Bech et al (US 6,932,893 B2).

A method is claimed of identifying a compound that alters membrane traffic comprising providing a high-throughput assay device comprising a hollow tube having sidewalls defining an inner cavity, said inner cavity for passing a first flowable fluid therethrough, open ends, an opening extending through a sidewall for mounting a membrane thereon, flowing a first flowable fluid containing a test compound through the inner cavity, flowing a second flowable fluid over an outer surface of the device, and determining whether the test compound increases or decreases traffic across the membrane patch.

Bech et al teach a device and method for electrophysiological measurements, such as monitoring ion channel-containing membranes, comprising a substrate (i.e., a tube) having a cell capture site together with liquid flow channels and three electro-osmotic flow (EOF) pump sites, as shown in Figure 8, described in column 23, lines 30-60. In the instant specification, Applicant defines “tubes” as not solely referring “to cylindrical structures, but...to a variety of geometries which may be used within the instant invention” (see, for example, page 5, lines 16-18 of the instant specification). In particular, Bech et al teach that the device has a housing containing fluidic canals (indicated by 77 and 82 in Figure 8) separated by a microstructured unit (74) supporting a thin membrane (75) on its surface. Bech et al teach that a passage in the membrane is adapted to hold a cell and forms the measurement site. Furthermore, Bech et al particularly teach that the fluidic system consists of two separate flow systems, wherein the first flow system consists of the canal (77) holding a cell solution which is in contact with the upper part of the membrane, an inlet (78) for adding cell solution, and an outlet (80) with a pump for controlling flow in the cell solution canal (77); and the second flow system consists of the canal (82) holding an intracellular buffer solution which is in contact with the bottom part of the membrane, an inlet (79) and an outlet (81) with EOF pumps for controlling flow of the intracellular buffer solution (see, for example, col. 23, lines 30-67 and Figure 8). Please note that the description of Figure 8 in the text found in Col. 23 does not exactly match what is found in Figure 8. The description provided by the Examiner is indicative of the teachings found in Figure 8.

Therefore, the reference is deemed to anticipate the instant claims above.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMANDA P. WOOD whose telephone number is (571)272-8141. The examiner can normally be reached on M-F 8:30AM -5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on (571) 272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

APW
Examiner
AU 1657

/Christopher R. Tate/
Primary Examiner, Art Unit 1655